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8 Counsel for FRED HJELMESET,
9 Trustee in Bankruptcy

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 In re

14 EVANDER FRANK KANE,
15 Debtor.

Case No. 21-50028 SLJ
Chapter 7
Hon. Stephen L. Johnson

**APPLICATION FOR AUTHORITY TO
(I) EMPLOY SPECIAL COUNSEL ON
CONTINGENCY FEE BASIS
(II) COMPENSATE DEBTOR FOR
ASSISTING SPECIAL COUNSEL FROM
JUDGMENT AND/OR SETTLEMENT
PROCEEDS, AND (III) REIMBURSE
DEBTOR FOR EXPENSES DEBTOR HAS
ADVANCED
(Putterman Yu Wang LLP)**

[No Hearing Required Unless Requested]

21 Fred Hjelmset, Trustee in Bankruptcy of the estate of the above-named Debtor ("Applicant"
22 or "Trustee") respectfully represents:

23 1. The Trustee seeks to employ the law firm Putterman Yu Wang LLP ("Law Firm")
24 for the purposes of pursuing claims against Sure Sports, LLC *fka* Sure Sports Lending, LLC ("Sure
25 Sports") regarding certain pre-petition loans that were entered into between the Debtor and third-
26 party lenders and arranged by Sure Sports.

27 2. Prior to the Debtor's January 9, 2021 petition date, Sure Sports and the Debtor were
28 parties to one or more agreements, some of which were entitled "Underwriting Fee Payment

1 Agreement.” Through these agreements, Sure Sports provided its “underwriting services” and,
2 commencing in 2018, helped “arrange financing via loans, lines of credit and equity transactions”
3 in excess of \$12 million.

4 3. On April 21, 2021, Sure Sports filed a claim against the Debtor’s estate for a “breach
5 of underwriting fee payment agreements.” The claim asserts that the estate is obligated to Sure
6 Sports in the amount of \$1,187,950.94 (“Claim”).

7 4. The agreements between the Debtor and Sure Sports may violate, among other
8 things, provisions of the Miller-Ayala Act (Business and Professions Code §§ 18895, *et seq.*)
9 (“MAAA”). The provisions of the various agreements between the Debtor and Sure Sports state
10 that Sure Sports “provided underwriting services” to the Debtor Kane in connection with various
11 loans, and state that Sure Sports will be compensated for “services rendered” to “arrange financing
12 via loans, lines of credit and equity transactions.” As such, these agreements appear to fall under the
13 statutory definition of the MAAA concerning “financial services contracts,” which are defined as
14 including “the making or execution of an investment or other financial decision, or counseling as a
15 to a financial decision.” Bus. & Prof. Code §18895.2(e). Based on its activities in recruiting or
16 soliciting the Debtor to enter into various loan agreements with lenders Sure Sports appears to be
17 an “athlete agent” as defined by the MAAA. Bus. & Prof. Code §18895.2 (b)(1) (“athlete agent”
18 includes “any person who, directly or indirectly, recruits or solicits an athlete to: enter into any agent
19 contract, endorsement contract, financial services contract.”).

20 5. The MAAA requires any individual or company that is an “athlete agent” as defined
21 in the Act to take various actions, including to file certain information with the California Secretary
22 of State (Bus. & Prof. Code §18896), to maintain an insurance policy or bond as security for
23 potential claims by athletes (Bus. & Prof. Code §18897.87), and to make certain disclosures when
24 dealing with athletes (Bus. & Prof. Code §18897.3). The Trustee is informed and believes, and on
25 that basis alleges, that Sure Sports has not complied with any of the foregoing requirements.

26 6. As a result, the Debtor’s estate has claims against Sure Sports, which may include,
27 without limitation: voiding all agreements between Sure Sports and the Debtor; precluding Sure
28 Sports from seeking further payments from the Debtor, including invalidating Sure Sports’ Claim;

1 return of money paid by the Debtor to Sure Sports pursuant to the agreements; obtaining statutory
2 damages under the MAAA; and attorneys' fees and court costs incurred in the prosecution of a claim
3 under the MAAA. (Bus. & Prof. Code §18897.8-18897.9).

4 7. The Trustee seeks to further investigate claims the estate may have against Sure
5 Sports and, if appropriate, pursue affirmative claims it has against Sure Sports in the bankruptcy
6 case, including claims that may arise under MAAA, and to seek to disallow the Claim.

7 8. The Debtor's estate is not in a position to employ counsel on an hourly basis to
8 investigate and pursue the claims it may have against Sure Sports. His general counsel is not in a
9 position to pursue these claims on a contingency fee basis. The Law Firm is willing to pursue the
10 claims on behalf of the bankruptcy estate on a contingency fee basis and is willing to advance certain
11 costs discussed below.

12 9. Under the terms of the proposed engagement agreement with the Law Firm
13 ("Agreement"), a copy of which is attached to the Declaration of George Chikovani filed
14 concurrently herewith, the Law Firm will be paid 45% through settlement or judgment of any Net
15 Recovery. The term "Net Recovery" means: (1) the total of all amounts received by settlement,
16 arbitration award, or judgment, including any award of attorney's fees, (2) minus all costs and
17 disbursements paid by the estate, Evander Kane and/or the Law Firm.

18 10. In order to pursue claims against Sure Sports, the Trustee will need the assistance of
19 the Debtor who has personal knowledge about the Sure Sport agreements. The Debtor has agreed
20 to assist the estate in exchange for payment of 10% of the Net Recovery. In addition, the Debtor has
21 agreed to advance the sum of \$15,000 to the Law Firm to pay the actual costs that the Law Firm
22 may incur related to pursuing the claims against Sure Sports. In the event of a Net Recovery against
23 Sure Sports, the Debtor will be reimbursed the costs he has advanced, in addition to receiving a sum
24 equal to 10% of the Net Recovery.

25 11. The Trustee is informed that the Law Firm is well versed in the facts and the law
26 related to this matter, and has pursued multiple claims under the MAAA.

27 12. The Trustee is seeking to employ the Law Firm, on a contingency fee basis under 11
28 U.S.C. §§ 327(a) and 328(a). Because of the estate's limited resources, the Trustee is not in a

1 position to employ counsel to prosecute the litigation on an hourly rate basis. Section 328(a) permits
2 contingency fee arrangements.

3 13. The Trustee predicts that litigation will be expensive and that a contingency fee
4 arrangement is in the best interest of the estate because of the substantial commitment that will be
5 required of counsel and the limited funds in the estate.

6 WHEREFORE, the Trustee requests entry of an order authorizing him to employ the Law
7 Firm and enter into the Agreement

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9 DATED: February 14, 2022

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13 FRED HJELMESET,
Trustee in Bankruptcy

14 DATED: February 14, 2022

RINCON LAW LLP

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16 By: /s/ Gregg S. Kleiner
17 GREGG S. KLEINER
18 Counsel for FRED HJELMESET,
19 Trustee in Bankruptcy
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